IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2630 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MARUTI TEXTILES

Versus

STATE OF GUJARAT

Appearance:

MR MIHIR H JOSHI for Petitioner No. 1

MRS MANISHA L SHAH AGP for Respondent No. 1-3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 28/08/2001

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner is an industrial undertaking which claims exemption from the electricity duty levied under the Bombay Electricity Duty Act, 1958 [hereinafter

referred to as, `the Act']. The authorities below have rejected the claim made by the petitioner on the ground that the petitioner is not a `new industrial undertaking' as envisaged under Section 3 of the Act.

Mr. Joshi has submitted that under Section 3 of the Act, a new industrial undertaking has been exempted from payment of electricity duty. The words, `a new industrial undertaking' have been defined in Clause (ii) of Explanation 1 to sub-section 2 of Section 3 to mean, inter alia, ` an industrial undertaking which is not formed by transfer to a new business or undertaking of a building, machinery or plant previously used in the State for any industrial purpose, of such value in relation to total investments, as the State Government may, by notification in the Official Gazette, specify.' Mr. Joshi has submitted that the State Government has, in exercise of the power conferred under the above referred clause, issued a Notification on 8th July, 1992 specifying the value of such transferred building, machinery or plant at 10% of the total investments. He has submitted that in so far as the petitioner is concerned, the value of machinery and plant transferred to the petitioner's undertaking previously used in the State is less than 10% of its total investments. However, the authorities below have failed to construe the above provision correctly and have excluded the value of the investment made in the land, while calculating the value of the total investment. Mr. Joshi has submitted that the legislative intention in the above referred provision is clear and unambiguous. While determining whether a particular undertaking is a `new undertaking' or not, the value of the building, machinery and plant which has been previously used in the State is required to be calculated in relation to the total investments. The words, `total investments' used in the said provision have not been defined in the Act. The said words, therefore, should be given the meaning that they carry in the commercial parlance. If such a meaning is given, the words `total investments' should also include the investment made in the land. If petitioner's investment in the land were included, the value of the machinery and plant previously used in the State and transferred in the petitioner undertaking is less than 10 per cent of the total investments which should entitle the petitioner the exemption from the levy of the electricity duty. He has further submitted that the object of granting such exemption is to attract the industries to the State. The provisions of the Act, therefore, should be construed in a manner which is conducive to the object underlying the said provision. Even otherwise, it being a taxing

statute, the meaning which is more beneficial to the assessee is required to be accepted. In either case, the petitioner would be entitled to the exemption from the levy of electricity duty.

In answer to the petition, Mrs. Shah has submitted that the definition of the words, `a new industrial undertaking' is exhaustive and no unit other than the one which falls within the said definition can be said to be a new industrial undertaking. The intention of the Government is to consider the value of the building, machinery and plant alone and the value of the investment made in the land cannot be considered while determining the value of the investment in the building, machinery or plant previously used in relation to total investments.

I am unable to agree with the contentions raised by Mrs. Shah. Sub-section (1) of Section 3 of the Act empowers the Government to levy electricity duty on the consumers at the rates specified in Schedule-I of the Act. Sub-section (2) thereof restrains the State Government from collecting electricity duty on the units of energy consumed by the categories of consumers enumerated therein. Clause (vii) thereof refers to the energy consumed for motive power and lighting in respect of premises used by an industrial undertaking. Clause (b) thereof refers to `a new industrial undertaking' which does not generate energy for its own use. Clause (ii) of Explanation 1 thereto reads as under :-

> `(ii) `a new industrial undertaking' means any such industrial undertaking which-
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> (a) is not formed by the splitting up or the reconstruction of a business or undertaking already in existence in the State; or
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> (b) is not formed by transfer to a new business or undertaking of a building, machinery or plant previously used in the State for any industrial purpose, of such value in relation to total investments, as the State Government may, by notification in the Official Gazette, specifiy; or
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> (c) is not an expansion of the

existing business or undertaking in the State.

It is the above referred sub-clause (b) of clause (vii) of sub-section (2) of Section 3 under which the petitioner claims exemption from payment of the electricity duty. It is an undisputed fact that while establishing its undertaking, the petitioner has used certain plant and machinery which were previously used in the State. The petitioner, however, claims that the investment made for such used plant and machinery is less than 10% of its total investments made in the land, plant and machinery, etc. The legislative intent in enacting the above referred sub-section (2) of Section 3 of the Act is clear and unambigious. The underlying object is not only to attract more industries but also to encourage such industries in making fresh investments in the State. The legislative intention is clear inasmuch as in relation to the words, `total investments' the legislature has used the words, `building, machinery or plant' for the purpose of ascertaining the value of investment in the old building, machinery or plant. There is no possibility to construe that the words, `building, machinery or plant' occurring in the first part of the said clause (b) would govern the meaning of the words `total investments' occurring in the later half of the said clause. The words, `buildings, machinery and plant' and the words, `total investments' have different and distinct import. When two words [or sets of words] of different import are used in a Statute in the same proviso, it would be difficult to maintain that they are used in the same sense. The words, `total investments' are not defined elsewhere in the Act and are required to be given the meaning it carries in the commercial parlance. If such meaning were to be given, the words `total investments' should include the investment made in the land as well.

I am, therefore, of the view that the authorities below have erred in excluding the investment made in the land, while computing the percentage of the investments made in the plant and machinery previously used in the State in relation to the value of the total investments. In that view of the matter, the orders made by the authorities below ie., the order dated 3rd January, 2001 made by the State Government in Electricity Duty Appeal No.2 of 2000 and the order dated 2nd June, 2000 made by the Commissioner of Electricity are quashed and set-aside. The Commissioner of Electricity, the respondent no. 2 herein is directed to reconsider the

application for exemption made by the petitioner, keeping in view the observations made in this judgement and to decide the same within eight weeks from today. The decision shall be communicated to the petitioner forthwith. Rule is made absolute. The parties shall bear their own costs.

[Ms. R.M Doshit, J.]

Prakash*